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Attorneys for Defendant Meta Platforms, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC., a Delaware
Corporation headquartered in California,

Defendant.

Case No. 3:20-cv-08570-JD

**LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE PURSUANT TO THE
HAGUE CONVENTION OF 18 MARCH
1970 ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL OR COMMERCIAL
MATTERS**

Judge: Hon. James Donato

1 The United States District Court for the Northern District of California presents its
2 compliments to the Ministry of Justice of the People's Republic of China and requests assistance
3 in obtaining evidence to be used in civil proceedings before this Court.

4 This request is made pursuant to, and in conformity with, Chapters I and II of the
5 Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
6 (the "Hague Evidence Convention"), to which both the United States and the People's Republic
7 of China are party.

8 Specifically, the District Court requests assistance in obtaining evidence from non-party
9 Tencent Holdings Ltd. ("Tencent"), a Chinese entity residing in Shenzhen, the People's Republic
10 of China.

11 **SECTION I**

12 **1. SENDER:**

13 The Honorable James Donato
14 United States District Court of the Northern District of California
15 450 Golden Gate Avenue
16 San Francisco, CA 94102
17 United States of America

18 **2. CENTRAL AUTHORITY OF THE REQUESTED STATE:**

19 International Legal Cooperation Center (ILCC)
20 Ministry of Justice of China
21 33, Pinganli Xidajie
22 Xicheng District
23 Beijing 100035
24 People's Republic of China
25 Tel: +86 (10) 5560 4537
26 Fax: +86 (10) 5560 4538

27 **3. PERSON TO WHOM THE EXECUTED REQUEST IS TO BE RETURNED:**

28 The Honorable James Donato
United States District Court of the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
United States of America

With a Copy to the Parties' Legal Representatives:
Stephen A. Swedlow

1 Quinn Emanuel Urquhart & Sullivan, LLP
2 191 N. Wacker Drive, Suite 2700
3 Chicago, IL 60606
4 Tel: (312) 705-7400
5 Email: stephenswedlow@quinnemanuel.com

6 Shana E. Scarlett
7 Hagens Berman Sobol Shapiro LLP
8 715 Hearst Avenue, Suite 202
9 Berkeley, CA 94710
10 Tel: (510) 725-3000
11 Email: shanas@hbsslaw.com

12 Yavar Bathaee
13 Bathaee Dunne LLP
14 445 Park Avenue, 9th Floor
15 New York, NY 10022
16 Tel: (332) 322-8835
17 Email: yavar@bathaeedunne.com

18 Kristen M. Anderson
19 Scott+Scott Attorneys at Law LLP
20 230 Park Avenue, 17th Floor
21 New York, NY 10169
22 Tel: (212) 223-6444
23 Email: kanderson@scott-scott.com

24 Sonal N. Mehta
25 Wilmer Cutler Pickering Hale and Dorr LLP
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28 Tel: (650) 858-6000
Email: sonal.mehta@wilmerhale.com

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250 Greenwich Street
New York, NY 10007
Tel: (212) 230-8800
Email: david.gringer@wilmerhale.com

**4. SPECIFICATION OF THE DATE BY WHICH THE REQUESTING AUTHORITY
REQUIRES RECEIPT OF THE RESPONSE TO THE LETTER OF REQUEST:**

The Requesting Authority would greatly appreciate a response to the Request for Assistance as soon as is practicable, to ensure that the documents are received in a timely manner for use in the civil proceedings described below.

SECTION II

IN CONFORMITY WITH ARTICLE 3 OF THE CONVENTION, THE UNDERSIGNED APPLICANT HAS THE HONOR TO SUBMIT THE FOLLOWING INFORMATION REGARDING THE INSTANT REQUEST:

5. (a) REQUESTING JUDICIAL AUTHORITY (Article 3(a)):

The Honorable James Donato
United States District Court of the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
United States of America

(b) TO THE COMPETENT AUTHORITY OF (Article 3(a)):

The People's Republic of China

(c) NAME OF THE CASE AND ANY IDENTIFYING NUMBER:

Klein, et al. v. Meta Platforms, Inc., No. 3:20-cv-08570-JD, United States District Court for the Northern District of California, San Francisco, CA, U.S.A.

6. NAMES AND ADDRESSES OF THE PARTIES AND THEIR REPRESENTATIVES (Article 3(b)):

(a) Plaintiffs:

Maximilian Klein

Sarah Grabert

Rachel Banks Kupcho

Affilious, Inc.

Jessyca Frederick

Mark Young

1 406 Property Services, PLLC

2 Mark Berney

3 Katherine Looper

4
5 Representatives:

6 Stephen A. Swedlow
7 Quinn Emanuel Urquhart & Sullivan, LLP
8 191 N. Wacker Drive, Suite 2700
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19 Scott+Scott Attorneys at Law LLP
20 230 Park Avenue, 17th Floor
21 New York, NY 10169
Tel: (212) 223-6444
Email: kanderson@scott-scott.com

22 **(b) Defendant:**

23 Meta Platforms, Inc.
24 1601 Willow Road
Menlo Park, CA 94025

25 Representatives:

26 Sonal Mehta
27 Wilmer Cutler Pickering Hale and Dorr LLP
28 2600 El Camino Real, Suite 400
Palo Alto, CA 94306

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Email: sonal.mehta@wilmerhale.com

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Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel: (212) 230-8800
Email: david.gringer@wilmerhale.com

7. NATURE AND PURPOSE OF THE PROCEEDINGS AND SUMMARY OF THE FACTS (Article 3(c)):

(a) Nature of the proceedings:

The nature of the proceeding is a consolidated civil action brought on behalf of two putative classes: (1) a putative Consumer Class (consisting of individuals who use Meta's social networking and social media services); and (2) a putative Advertiser Class (consisting of individuals and entities that purchased Meta's advertising services). Consumer Plaintiffs bring claims under Section 2 of the Sherman Act alleging that Meta obtained and maintains monopoly power in the purported Social Network and Social Media Markets through allegedly false representations about its data collection and use practices. Advertiser Plaintiffs bring claims under Sections 1 and 2 of the Sherman Act for Meta's alleged monopolization and attempted monopolization of the purported Social Advertising market, including an alleged market division agreement between Meta and Google. These claims are based on the Consumer Plaintiffs' Consolidated Class Action Complaint, Dkt. No. 87, and the Advertiser Plaintiffs' First Amended Consolidated Class Action Complaint, Dkt. No. 237.

(b) Summary of complaint:

Consumer Plaintiffs: Consumer Plaintiffs allege that Meta has engaged in deceptive practices regarding the data privacy protections it provides to users of its services. Consumer Plaintiffs claim that Meta falsely represented that it would provide users with certain privacy protections and deceived users about the amount of user data that it harvested and made available to third parties. Consumer Plaintiffs allege that Meta's misrepresentations caused many users to use Meta's services over other competing platforms, which allowed Meta to obtain and maintain a

monopoly position in the “social network” and “social media” markets. A copy of the Consumer Plaintiffs’ Consolidated Class Action Complaint is attached as Attachment A.

Advertiser Plaintiffs: Advertiser Plaintiffs similarly allege that Meta’s deceptive practices regarding its data privacy protections allowed Meta to acquire a monopoly position in the “social advertising” market. Advertiser Plaintiffs further allege that Meta engaged in anticompetitive practices to eliminate and prevent further competition. Specifically, Advertiser Plaintiffs claim that Meta prevented developers from building mobile applications that could become rival social networks and competitors in the social advertising market. Advertiser Plaintiffs also allege that Meta and Google entered an anticompetitive agreement in September 2018 that divided the online advertising market and helped Meta maintain its position in the social advertising market. A copy of the Advertiser Plaintiffs’ First Amended Consolidated Class Action Complaint is attached as Attachment B.

(c) Summary of defense:

For numerous reasons, Meta denies the allegations in the Consumer and Advertiser Plaintiffs’ complaints. This Letter of Request is intended to obtain information particularly relevant to the following defenses (which is not an exhaustive list of Meta’s defenses in this proceeding): The market, as defined by the Consumer and Advertiser Plaintiffs, is implausible; the industry and the public do not recognize the purported “social network,” “social media,” or “social advertising” markets; Meta does not have the requisite market share of the alleged markets; competition and consumers cannot be harmed from alleged monopolization of a market for a product distributed free to all users; Meta’s data privacy policies and practices are not a means to gain competitive advantage over other competitors; and Meta has always faced competition in any properly defined market.

SECTION III

8. EVIDENCE TO BE OBTAINED OR OTHER JUDICIAL ACT TO BE PERFORMED (Article 3(d)):

(a) Evidence to be obtained:

1 The assistance requested of the People's Republic of China consists of obtaining copies of
2 documents in the possession of Tencent Holdings Ltd.

3 **(b) Purpose of the evidence sought:**

4 The evidence sought in this Letter of Request pertains to the allegations and defenses
5 described above and are to be used only in legal proceedings in the matter described. The evidence
6 is subject to a strict protective order as provided in Attachment C. The protective order ensures
7 that documents produced in this matter will not be used by Meta in any way other than for purposes
8 of the litigation. The protective order provides that a producing party such as Tencent Holdings
9 Ltd. may mark its documents as Confidential or Highly Confidential; if it does, no one at Meta
10 may see the documents except two (in the case of Highly Confidential material) to four (in the case
11 of Confidential Material) in-house counsel who are not permitted to participate in Meta's
12 competitive decision-making for two years after receiving the documents.

13 The information sought in this Request is necessary in the interest of justice for Meta to
14 defend itself fairly against the allegations made by the Consumer and Advertiser Plaintiffs. In
15 particular, Tencent Holdings Ltd. is the owner of WeChat and QQ, which Tencent labels as "social
16 platform[s]."¹ The evidence sought from Tencent regarding the market in which it operates, the
17 share of that market, and its competition with Meta for user time and attention is relevant to Meta's
18 defense, because the presence of other digital platform companies such as Tencent demonstrates
19 that Meta lacks monopoly power in any market.

20 Meta seeks discovery from Tencent to show that Tencent's products have competed with
21 Meta's products. Meta seeks documents related to how Tencent views competition between its
22 products and Meta (Document Request No. 1) and whether WeChat or QQ's services provide users
23 with features substantially similar to those provided by Meta (Document Request No. 2). Meta
24 also asks whether Tencent has considered compensating its users for data to test Plaintiffs'
25 damages theory (Document Request No. 3). To address Plaintiffs' allegations related to market
26 power, Meta is requesting documents related to whether Tencent believes that its privacy policies

27
28 ¹ Tencent, Businesses, <https://www.tencent.com/en-us/business.html> (accessed March 26, 2022).

and practices differentiate its products from those offered by its competitors or impact user satisfaction or engagement (Document Request No. 4 & 5). Meta also seeks documents related to Tencent's acquisition of certain U.S.-based companies that compete with Meta (Document Request No. 6). Lastly, Meta has two limited data requests related to Plaintiffs' allegations of market share and market definition regarding time spent on WeChat and QQ and the number of Daily Active Users (Document Request Nos. 7 & 8). Meta believes that this information is relevant to countering Plaintiffs' allegations that Meta has monopoly power in any cognizable market. Meta limited these requests to time spent, active users, and daily active users, which have been recognized as "appropriate indicators" of "market share." *See Fed. Trade Comm'n v. Facebook, Inc.*, 2022 WL 103308, at *7 (D.D.C. Jan. 11, 2022). Request Number 7 seeks data limited to specific periods of time when there was an outage on Meta's products and seeks information related to diversion from Meta's products. In Request Number 8, Meta has asked for data from 2011-2014 and 2021 to help respond to Plaintiffs' allegations that Meta has any type of durable monopoly power.

9. DOCUMENTS OR OTHER PROPERTY TO BE INSPECTED (Article 3(g)):

Attached as Attachment D is a list of documents to be obtained from Tencent Holdings Ltd.

10. SPECIAL METHODS OR PROCEDURES TO BE FOLLOWED (Article 3(i) & 9):

To the extent permitted by the applicable laws of China, it is respectfully requested that the appropriate judicial authority of China require that the requested documents be duly marked for identification and produced in electronic and/or paper format, bearing such identification, to:

David Z. Gringer
 Wilmer Cutler Pickering Hale and Dorr LLP
 7 World Trade Center
 250 Greenwich Street
 New York, NY 10007
 Tel: (212) 230-8800
 Email: david.gringer@wilmerhale.com

It is further requested that, if permitted under the laws of China, the document production be accompanied by a sworn statement from an authorized Tencent agent, which attests to the fact

1 that the production comprises the entirety of the documents described herein, or otherwise
2 specifies what documents have been omitted and the reasons for their omission, and which
3 authenticates the documents as true and accurate copies of the documents described herein.

4 **11. REQUEST FOR NOTIFICATION OF THE TIME AND PLACE FOR THE**
5 **EXECUTION OF THE REQUEST AND IDENTITY AND ADDRESS OF ANY**
6 **PERSON TO BE NOTIFIED (Article 7):**

7 It is requested that notice of the execution of the Request be provided to the parties'
8 representatives listed in paragraph 6 above.

9 **12. REQUEST FOR ATTENDANCE OR PARTICIPATION OF JUDICIAL**
10 **PERSONNEL OF THE REQUESTING AUTHORITY AT THE EXECUTION OF**
11 **THE LETTER OF REQUEST (Article 8):**

12 None.

13 **13. AUTHORITY APPOINTING COMMISSIONER, PENDING APPROVAL OF THE**
14 **MINISTRY OF JUSTICE:**

15 The United States District Court for the Northern District of California.

16 **14. SPECIFICATION OF PRIVILEGE OR DUTY TO REFUSE TO GIVE EVIDENCE**
17 **UNDER THE LAW OF THE STATE OF ORIGIN (Article 11(b)):**

18 In addition to the privileges applicable under Chinese laws, Tencent Holdings Ltd. need
19 not disclose documents and electronic records which constitute confidential communications
20 between it and its attorneys to the extent those communications seek or provide legal advice. This
21 privilege may be waived, however, if the communication has been disclosed to third parties.

22 **15. THE FEES AND COSTS INCURRED WHICH ARE REIMBURSABLE UNDER**
23 **THE SECOND PARAGRAPH OF ARTICLE 14 OR UNDER ARTICLE 26 OF THE**
24 **CONVENTION WILL BE BORNE BY:**

25 The costs of this Hague Evidence Convention process, including the fees of the
26 Commissioner, will be borne by Meta Platforms, Inc., c/o its counsel as identified above. Each
27
28

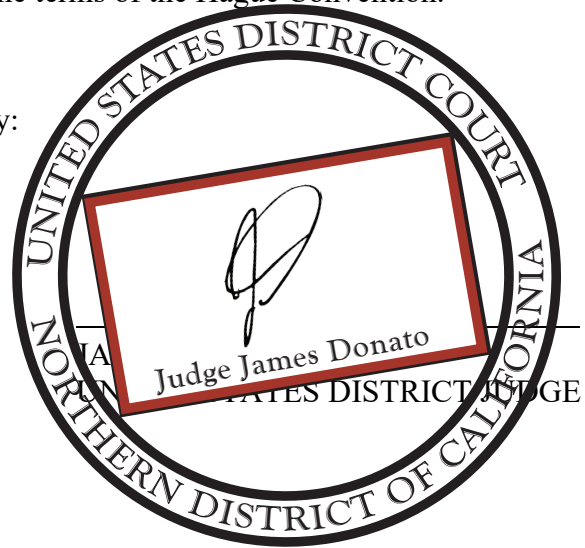
1 party will be responsible for the fees and expenses, if any, of its own attorneys relating to any
2 proceedings arising from this Hague Evidence Convention process.

3 **SECTION IV**

4 This District Court expresses its gratitude to the authorities of the People's Republic of
5 China for their assistance and courtesy under the terms of the Hague Convention.

6
7 Signature and Seal of the Requesting Authority:

8
9
10 Dated: November 18, 2022



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HALE AND DORR LLP

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Telephone: (202) 663-6000

Attorneys for Defendant Meta Platforms, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC., a Delaware
Corporation headquartered in California,

Defendant.

Case No. 3:20-cv-08570-JD

**LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE PURSUANT TO THE
HAGUE CONVENTION OF 18 MARCH
1970 ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL OR COMMERCIAL
MATTERS**

Judge: Hon. James Donato

1 The United States District Court for the Northern District of California presents its
2 compliments to the Registrar of the Supreme Court of the British Virgin Islands and requests
3 assistance in obtaining evidence to be used in civil proceedings before this Court.

4 This request is made pursuant to, and in conformity with, Chapters I and II of the
5 Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
6 (the “Hague Evidence Convention”), to which both the United States and the British Virgin Islands
7 are party.

8 Specifically, the District Court requests assistance through the law firm Harney Westwood
9 & Riegels, LP of Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands,
10 in obtaining evidence from non-party Telegram Messenger, Inc. (“Telegram”), a British Virgin
11 Islands (“BVI”) entity registered in Tortola, the British Virgin Islands.

12 **SECTION I**

13 **1. SENDER:**

14 The Honorable James Donato
15 United States District Court of the Northern District of California
16 450 Golden Gate Avenue
17 San Francisco, CA 94102
18 United States of America

19 **2. CENTRAL AUTHORITY OF THE REQUESTED STATE:**

20 Registrar of the Eastern Caribbean Supreme Court
21 Supreme Court Registry
22 Sakal Place, 2nd Floor
23 P.O. Box 418
24 Road Town, Tortola
25 British Virgin Island VG1110
26 Tel: +284 468 5001
27 Fax: +284 468 4951

28 **3. PERSON TO WHOM THE EXECUTED REQUEST IS TO BE RETURNED:**

The Honorable James Donato
United States District Court of the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
United States of America

With a Copy to the Parties' Legal Representatives:

Stephen A. Swedlow
Quinn Emanuel Urquhart & Sullivan, LLP
191 N. Wacker Drive, Suite 2700
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Tel: (312) 705-7400
Email: stephenswedlow@quinnemanuel.com

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Tel: (212) 230-8800
Email: david.gringer@wilmerhale.com

**4. SPECIFICATION OF THE DATE BY WHICH THE REQUESTING AUTHORITY
REQUIRES RECEIPT OF THE RESPONSE TO THE LETTER OF REQUEST:**

1 The Requesting Authority would greatly appreciate a response to the Request for
2 Assistance as soon as is practicable, to ensure that the documents are received in a timely manner
3 for use in the civil proceedings described below.

4 **SECTION II**

5 **IN CONFORMITY WITH ARTICLE 3 OF THE CONVENTION, THE UNDERSIGNED**
6 **APPLICANT HAS THE HONOR TO SUBMIT THE FOLLOWING INFORMATION**
7 **REGARDING THE INSTANT REQUEST:**

8 **5. (a) REQUESTING JUDICIAL AUTHORITY (Article 3(a)):**

9 The Honorable James Donato
10 United States District Court of the Northern District of California
11 450 Golden Gate Avenue
12 San Francisco, CA 94102
13 United States of America

14 **(b) TO THE COMPETENT AUTHORITY OF (Article 3(a)):**

15 The British Virgin Islands

16 **(c) NAME OF THE CASE AND ANY IDENTIFYING NUMBER:**

17 *Klein, et al. v. Meta Platforms, Inc.*, No. 3:20-cv-08570-JD, United States District Court
18 for the Northern District of California, San Francisco, CA, U.S.A.

19 **6. NAMES AND ADDRESSES OF THE PARTIES AND THEIR**
20 **REPRESENTATIVES (Article 3(b)):**

21 **(a) Plaintiffs:**

22 Maximilian Klein

23 Sarah Grabert

24 Rachel Banks Kupcho

25 Affilious, Inc.

26 Jessyca Frederick

27 Mark Young

1 406 Property Services, PLLC

2 Mark Berney

3 Katherine Looper

4
5 Representatives:

6 Stephen A. Swedlow
7 Quinn Emanuel Urquhart & Sullivan, LLP
8 191 N. Wacker Drive, Suite 2700
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22 **(b) Defendant:**

23 Meta Platforms, Inc.
24 1601 Willow Road
Menlo Park, CA 94025

25 Representatives:

26 Sonal Mehta
27 Wilmer Cutler Pickering Hale and Dorr LLP
28 2600 El Camino Real, Suite 400
Palo Alto, CA 94306

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 Email: sonal.mehta@wilmerhale.com

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 3 Wilmer Cutler Pickering Hale and Dorr LLP
 4 7 World Trade Center
 5 250 Greenwich Street
 New York, NY 10007
 6 Tel: (212) 230-8800
 Email: david.gringer@wilmerhale.com

7 **7. NATURE AND PURPOSE OF THE PROCEEDINGS AND SUMMARY OF THE**
 8 **FACTS (Article 3(c)):**

9 **(a) Nature of the proceedings:**

10 The nature of the proceeding is a consolidated civil action brought on behalf of two putative
 11 classes: (1) a putative Consumer Class (consisting of individuals who use Meta's social networking
 12 and social media services); and (2) a putative Advertiser Class (consisting of individuals and
 13 entities that purchased Meta's advertising services). Consumer Plaintiffs bring claims under
 14 Section 2 of the Sherman Act alleging that Meta obtained and maintains monopoly power in the
 15 purported Social Network and Social Media Markets through allegedly false representations about
 16 its data collection and use practices. Advertiser Plaintiffs bring claims under Sections 1 and 2 of
 17 the Sherman Act for Meta's alleged monopolization and attempted monopolization of the
 18 purported Social Advertising market, including an alleged market division agreement between
 19 Meta and Google. These claims are based on the Consumer Plaintiffs' Consolidated Class Action
 20 Complaint, Dkt. No. 87, and the Advertiser Plaintiffs' First Amended Consolidated Class Action
 21 Complaint, Dkt. No. 237.

22 **(b) Summary of complaint:**

23 Consumer Plaintiffs: Consumer Plaintiffs allege that Meta has engaged in deceptive
 24 practices regarding the data privacy protections it provides to users of its services. Consumer
 25 Plaintiffs claim that Meta falsely represented that it would provide users with certain privacy
 26 protections and deceived users about the amount of user data that it harvested and made available
 27 to third parties. Consumer Plaintiffs allege that Meta's misrepresentations caused many users to use
 28 Meta's services over other competing platforms, which allowed Meta to obtain and maintain a

monopoly position in the “social network” and “social media” markets. A copy of the Consumer Plaintiffs’ Consolidated Class Action Complaint is attached as Attachment A.

Advertiser Plaintiffs: Advertiser Plaintiffs similarly allege that Meta’s deceptive practices regarding its data privacy protections allowed Meta to acquire a monopoly position in the “social advertising” market. Advertiser Plaintiffs further allege that Meta engaged in anticompetitive practices to eliminate and prevent further competition. Specifically, Advertiser Plaintiffs claim that Meta prevented developers from building mobile applications that could become rival social networks and competitors in the social advertising market. Advertiser Plaintiffs also allege that Meta and Google entered an anticompetitive agreement in September 2018 that divided the online advertising market and helped Meta maintain its position in the social advertising market. A copy of the Advertiser Plaintiffs’ First Amended Consolidated Class Action Complaint is attached as Attachment B.

(c) Summary of defense:

For numerous reasons, Meta denies the allegations in the Consumer and Advertiser Plaintiffs’ complaints. This Letter of Request is intended to obtain information particularly relevant to the following defenses (which is not an exhaustive list of Meta’s defenses in this proceeding): The market, as defined by the Consumer and Advertiser Plaintiffs, is implausible; the industry and the public do not recognize the purported “social network,” “social media,” or “social advertising” markets; Meta does not have the requisite market share of the alleged markets; competition and consumers cannot be harmed from alleged monopolization of a market for a product distributed free to all users; Meta’s data privacy policies and practices are not a means to gain competitive advantage over other competitors; and Meta has always faced competition in any properly defined market.

SECTION III

8. EVIDENCE TO BE OBTAINED OR OTHER JUDICIAL ACT TO BE PERFORMED (Article 3(d)):

(a) Evidence to be obtained:

1 The assistance requested of the British Virgin Islands consists of obtaining copies of
2 documents in the possession of Telegram.

3 **(b) Purpose of the evidence sought:**

4 The evidence sought in this Letter of Request pertains to the allegations and defenses
5 described above and are to be used only in legal proceedings in the matter described. The evidence
6 is subject to a strict protective order as provided in Attachment C. The protective order ensures
7 that documents produced in this matter will not be used by Meta in any way other than for purposes
8 of the litigation. The protective order provides that a producing party such as Telegram may mark
9 its documents as Confidential or Highly Confidential; if it does, no one at Meta may see the
10 documents except two (in the case of Highly Confidential material) to four (in the case of
11 Confidential Material) in-house counsel who are not permitted to participate in Meta's competitive
12 decision-making for two years after receiving the documents.

13 The information sought in this Request is necessary in the interest of justice for Meta to
14 defend itself fairly against the allegations made by the Consumer and Advertiser Plaintiffs. In
15 particular, Telegram provides a popular and prominent cloud-based messaging service which users
16 view as a competitive substitute to Meta's products. In late 2021, when Meta's products
17 experienced a six-hour long outage, Telegram reportedly gained 70 million new users. The
18 evidence sought from Telegram regarding the market in which it operates, the share of that market,
19 and its competition with Meta products (such as Instagram and WhatsApp) for user time and
20 attention are relevant to Meta's defense, because the presence of other digital platform companies
21 such as Telegram demonstrates that Meta lacks monopoly power in any market.

22 Meta seeks discovery from Telegram to show that Telegram has competed with Meta's
23 products. Meta seeks documents related to how Telegram views competition between Telegram
24 and Meta (Document Request No. 1) and whether Telegram's services provide users with features
25 substantially similar to those provided by Meta (Document Request No. 2). Meta also asks
26 whether Telegram has considered compensating its users for data to test Plaintiffs' damages theory
27 (Document Request No. 3). To address Plaintiffs' allegations related to market power, Meta is
28

requesting documents related to whether Telegram believes that its privacy policies and practices differentiate its products from those offered by its competitors or impact user satisfaction or engagement (Document Request No. 4 & 5). Lastly, Meta has two limited data requests related to Plaintiffs' allegations of market share and market definition regarding time spent on Telegram and the number of Daily Active Users (Document Request Nos. 6 & 7). Meta believes that this information is relevant to countering Plaintiffs' allegations that Meta has monopoly power in any cognizable market. Meta limited these requests to time spent, active users, and daily active users, which have been recognized as "appropriate indicators" of "market share." *See Fed. Trade Comm'n v. Facebook, Inc.*, 2022 WL 103308, at *7 (D.D.C. Jan. 11, 2022). Request Number 6 seeks data limited to specific periods of time when there was an outage on Meta's products and seeks information related to diversion from Meta's products. In Request Number 7, Meta has asked for data from 2013-2016 and 2021 to help respond to Plaintiffs' allegations that Meta has any type of durable monopoly power.

9. DOCUMENTS OR OTHER PROPERTY TO BE INSPECTED (Article 3(g)):

Attached as Attachment D is a list of documents to be obtained from Telegram.

10. SPECIAL METHODS OR PROCEDURES TO BE FOLLOWED (Article 3(i) & 9):

To the extent permitted by applicable laws, it is respectfully requested that the appropriate judicial authority of the British Virgin Islands require that the requested documents be duly marked for identification and produced in electronic and/or paper format, bearing such identification, to:

David Z. Gringer
 Wilmer Cutler Pickering Hale and Dorr LLP
 7 World Trade Center
 250 Greenwich Street
 New York, NY 10007
 Tel: (212) 230-8800
 Email: david.gringer@wilmerhale.com

It is further requested that, if permitted under the laws of the British Virgin Islands, the document production be accompanied by a sworn statement from an authorized Telegram agent, which attests to the fact that the production comprises the entirety of the documents described herein, or otherwise specifies what documents have been omitted and the reasons for their

omission, and which authenticates the documents as true and accurate copies of the documents described herein.

11. REQUEST FOR NOTIFICATION OF THE TIME AND PLACE FOR THE EXECUTION OF THE REQUEST AND IDENTITY AND ADDRESS OF ANY PERSON TO BE NOTIFIED (Article 7):

It is requested that notice of the execution of the Request be provided to the parties' representatives listed in paragraph 6 above.

12. REQUEST FOR ATTENDANCE OR PARTICIPATION OF JUDICIAL PERSONNEL OF THE REQUESTING AUTHORITY AT THE EXECUTION OF THE LETTER OF REQUEST (Article 8):

None.

13. AUTHORITY APPOINTING COMMISSIONER, PENDING APPROVAL OF THE MINISTRY OF JUSTICE:

The United States District Court for the Northern District of California.

14. SPECIFICATION OF PRIVILEGE OR DUTY TO REFUSE TO GIVE EVIDENCE UNDER THE LAW OF THE STATE OF ORIGIN (Article 11(b)):

In addition to the privileges applicable under BVI laws, Telegram need not disclose documents and electronic records which constitute confidential communications between it and its attorneys to the extent those communications seek or provide legal advice. This privilege may be waived, however, if the communication has been disclosed to third parties.

15. THE FEES AND COSTS INCURRED WHICH ARE REIMBURSABLE UNDER THE SECOND PARAGRAPH OF ARTICLE 14 OR UNDER ARTICLE 26 OF THE CONVENTION WILL BE BORNE BY:

The costs of this Hague Evidence Convention process, including the fees of the Commissioner, will be borne by Meta Platforms, Inc., c/o its counsel as identified above. Each party will be responsible for the fees and expenses, if any, of its own attorneys relating to any proceedings arising from this Hague Evidence Convention process.

SECTION IV

This District Court expresses its gratitude to the authorities of the British Virgin Islands for their assistance and courtesy under the terms of the Hague Convention.

Signature and Seal of the Requesting Authority:

Dated: November 18, 2022

